IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7007 OF 2007

Leharidevi Chowdhari .... Petitioner

versus

State of Maharashtra & ors..... Respondent.

Mr. S.P.Kanuga with Smt. Sapna N. Nath for the petitioner.
Mr. Girish Godbole i/b M.V. Aiya for the respondent no.3 and 3-A.
Mr. R.M.patne AGP for Respondents 1 and 2.

CORAM; A.P. DESHPANDE, J.
DATED; 28TH SEPTEMBER, 2007

P.C.;

1. The respondent no.2, Controller of Rationing, by a public notice invited applications with a view to grant a fair price shop/ration shop. The present petitioner and the respondent nos.3 and 3-A along with others applied for the same, as they are desirous of obtaining the ration shop. The respondent no.2, Controller of Rationing, granted the shop in favour of one Smt. Sunita Shivkumar Gupta. Aggrieved thereby the present petitioner so also respondent nos. 3 and 3-A who are partners of a partnership firm, filed revision before the State Government. The Revisional Authority after setting aside the order passed in favour of Smt. Sunita S. Gupta, allotted the ration shop in favour of the respondent nos.3 and 3-A as

partners of the partnership firm. It it this order passed by the State Government in revision, which is challenged by filing the instant writ petition.

2. The learned counsel for the petitioner has submitted that the partnership firm of which respondent nos.3 and 3-A are partners is not a registered partnership firm. My attention is invited to the advertisement issued, so also the Government Resolution dated 25-3-1994, which regulates the grant of fair price shop. No doubt one of the conditions prescribed for allotment of a fair price shop is that the partnership need to be registered. Pointing out the said lacuna in the proposal of respondent nos.3 and 3-A, the learned counsel for the petitioner has submitted that the State Government has acted arbitrarily and taken a decision in favour of the respondent nos.3 and 3-A contrary to the law laid down in **Ramana Dayaram Shetty Vs. International Air Port Authority of India's case reported in (1979) 3 S.C.C. page 489.**

3. Per contra the learned counsel appearing for the respondent nos. 3 and 3-A has submitted that the petitioner herein is not eligible for grant of fair price shop as he lacked the eligibility criteria for obtaining the fair price shop. The submission is that the applicant need to be financially sound so that the

fair price shop can be smoothly run and clause 19 of the Government Resolution in the first place laid down that the applicant must have a sum of Rs. 50,000/- available for investing in the business. The said clause further provides that assurance from a third party that money would be made available to the applicant cannot be treated as compliance of the requirements of clause 19.

4. Perusal of the orders passed by both the authorities below indicate that the present petitioner had submitted a letter of assurance issued by one Vardhaman Dhanji Chaudhari that he would make available a sum of Rs. 60,000/- to the petitioner in the event if the ration shop is allotted to the petitioner. Both the authorities below, have held that the said assurance letter issued by Vardhaman Dhanji Choudhari does not go to establish the petitioner's viability to carry on the business of fair price shop and thus rejected the petitioner's claim.

5. The learned counsel for the petitioner has placed on record a bank statement which goes to indicate that the petitioner had opened an account with the said bank on 20-4-2007 and it reveals a deposit of a sum of Rs. 49,000/-. What is to be seen is that the said document has not been considered by the authorities

below for the reason that the last date of submission of the application was 26-3-2007 and after the cut off date the account was opened. The non consideration of the bank account by the authorities below cannot be faulted as the authorities were insisting for the eligibility on the last date of submission of applications. Thus the situation that emerges is that the petitioner has been found not eligible to claim the ration shop and there is also an infirmity in the proposal submitted by respondent nos.3 and 3-A in as much as the partnership is not a registered partnership. Judicial notice can be taken of the handicap faced by partners of the unregistered partnership firm. Under section 69 of the Indian Partnership Act, the partners of the unregistered partnership firm cannot bring a suit against third party whereas no such impediment is there in the way of third party in suing the partners of the unregistered partnership firm. in this view of the matter as there is no chance of any prejudice being caused to anyone else barring the partners of the unregistered partnership firm, I do not deem it appropriate to upset the allotment made in favour of the respondent nos.3 and 3-A by the State Government. In the peculiar facts of the present case. I decline to exercise the discretion in favour of the petitioner more so in view of the fact that the petitioner has been found to be in-eligible for allotment of the fair

price shop by the authorities below. In the result the writ petition is summarily dismissed.

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